IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPEALLATE JURISDICTION

CIVIL APPLICATION NO. 573 OF 2006
IN
SECOND APPEAL (STAMP) NO. 7413 OF 2006

Ganpati Rau Yelave & Ors. ...Applicants
V/s.
Pandurang Nivrutti Yelave & Ors. ...Respondents

Shri Satish Sonar i/b. S.D. Dharmadhikari for the Applicants.
Shri T.S. Ingale for Respondent Nos.1, 2a to 2c and 3.

CORAM : D.B. BHOSALE, J.

DATED : JANUARY 31, 2007

P.C. :-

. Heard the learned Counsel for the parties.

1. By this civil application, the applicants/defendants have prayed for condonation of about three years delay in filing the appeal challenging the judgment and order of the appeal court dated 16th December, 2003. This application and appeal was filed by the applicants/appellants on 23rd March, 2006. The applicant nos.1 and 2 are the sons of applicant no.3 whereas applicant no.4 is her daughter. The only explanation, for seeking condonation of about one thousand days, offered by the applicants is that

applicant no.3 is suffering from old age ailments since past 3-4 years and has been under constant medical treatment and in view thereof other applicants who look after her and who were not acquainted with court procedure could not approach this court within time. In support of this contention, a medical certificate dated 18th March, 2006 issued by Dr.P.G. Thombare, B.A.M.S., C.C.H., C.C.M., is placed on record. He has certified that applicant no.3 was suffering from hypertension since January 2003. Even if it is assumed that applicant no.3 was suffering from ailment as stated in the application, no satisfactory explanation is offered or cause shown, which prevented the other applicants from approaching the court and challenge the impugned judgments. I am informed that all the applicants have been attending all the dates before executing authority in the execution proceedings arising from the judgment and decree impugned in the present appeal. That falsifies the ground of illness of applicant no.3 made out for condonation of delay. The cause shown is not only unsatisfactory but untrue and, in any case, not sufficient to condone the delay of about three years in

filing the appeal. I am informed that the execution proceedings have reached the stage of possession.

2. In the circumstances, this civil application is rejected and in consequence thereof, the appeal also stands dismissed as barred by Law of Limitation.

(D.B. BHOSALE, J.)